

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JOHN BARRAGAN)	
Claimant)	
VS.)	
)	Docket No. 233,731
HUTCHINSON SALT COMPANY, INC.)	
Respondent)	
AND)	
)	
AMERICAN HOME ASSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appeals the July 11, 2001, Award of Administrative Law Judge Bruce E. Moore. Claimant was granted a 5 percent permanent partial general body disability award for injuries suffered to his lumbar spine. Claimant was, however, denied any permanent disability to the cervical spine and contends he is entitled to a 5 percent impairment for injuries to his cervical spine and an additional 5 percent for the injuries suffered to his lumbar spine, for a total award of 15 percent.

Respondent contends that claimant has failed to prove that he suffered accidental injury arising out of and in the course of his employment, alleging the injury stems from claimant's private carpet cleaning business. Respondent further contends that claimant failed to give timely notice to respondent of the accident as required by statute. The Board held oral argument on February 13, 2002.

APPEARANCES

Claimant appeared by his attorney, Andrew L. Oswald of Hutchinson, Kansas. Respondent and its insurance carrier appeared by their attorney, James M. McVay of Great Bend, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopts the stipulations contained in the Award of the Administrative Law Judge.

ISSUES

- (1) Did claimant suffer accidental injury arising out of and in the course of his employment on the dates alleged?
- (2) Did claimant provide timely notice of accident as required by K.S.A. 44-520?
- (3) What, if any, is the nature and extent of claimant's injury and/or disability?
- (4) Is claimant entitled to future medical treatment for the injuries suffered while employed with respondent?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary file contained herein, the Appeals Board finds that the Award of the Administrative Law Judge should be affirmed.

The Award sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The Appeals Board adopts those findings and conclusions as though contained herein. It is not necessary to repeat those in this Order.

In the Award, the Administrative Law Judge found claimant had failed to prove that his cervical complaints were related to his on-the-job injuries. The Appeals Board concurs with that finding. While the Administrative Law Judge indicates the first mention of cervical complaints is on May 29, 1998, the Appeals Board does note cervical complaints in Terry L. Webb, D.C.'s chiropractic notes as early as December 10, 1997. However, Dr. Webb's chiropractic notes also clarify that as of February 13, 1998, claimant had a full range of motion in his cervical spine without pain. Additionally, Dr. Webb's notes contain no indication that claimant's cervical complaints are, in any way, related to his employment with respondent. The Appeals Board, therefore, affirms the finding that claimant has failed

to prove that he suffered accidental injury arising out of and in the course of his employment with respondent with regard to his cervical spine.

The Appeals Board also agrees with the Administrative Law Judge's assessment of a 5 percent impairment to the body as a whole for the lumbar spine injury. C. Reiff Brown, M.D., and Lee R. Dorey, M.D., who assessed claimant functional impairments, agree that claimant had a functional impairment to the lumbar spine. Dr. Brown opined that of his 10 percent, a portion although unidentified was preexisting. Dr. Dorey appears to assess the entire 5 percent to claimant's condition as it relates to his injuries with respondent. The Board, finding Dr. Dorey's opinion the most compelling, affirms the finding that claimant suffered a 5 percent impairment to the body as a whole as a result of these injuries.

Additionally, while claimant's testimony on how the accident happened is somewhat contradicted by the testimony of Ronald Worthey, one of claimant's coworkers, the Appeals Board finds claimant to be credible and persuasive with regard to the mechanics of the injury to his low back. Additionally, Alan Roberts, the underground supervisor for respondent, acknowledged that claimant advised him within a week after the March 27, 1998, accident that claimant suffered a back injury while operating the Eimco machine. This satisfies the requirements of K.S.A. 44-520 (Furse 1993) that notice be provided to respondent within ten days of the date of accident.

The Board, therefore, finds that the Award of the Administrative Law Judge awarding claimant a 5 percent general body disability for injuries suffered on December 8, 1997, and through a series of accidents culminating on March 27, 1998, should be affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Bruce E. Moore dated July 11, 2001, should be, and is hereby, affirmed, and an award is granted in favor of the claimant, John Barragan, and against the respondent, Hutchinson Salt Company, Inc., and its insurance carrier, American Home Assurance Company, for injuries occurring through March 27, 1998, and based upon an average weekly wage of \$626.42 for a 5 percent permanent partial general body disability.

IT IS SO ORDERED.

Dated this ____ day of February 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Andrew L. Oswald, Attorney for Claimant
 James M. McVay, Attorney for Respondent
 Bruce E. Moore, Administrative Law Judge
 Philip S. Harness, Director